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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE DISTRICT OF ARIZONA**  
10

11 Sharon Melsky Kealoha,

12 Plaintiff,

13 v.

14 Commissioner of Social Security  
15 Administration,

16 Defendant.

No. CV-22-01393-PHX-SMB

**ORDER**

17 At issue is the denial of Sharon M. Kealoha's Application for Social Security  
18 Disability Insurance ("SSDI") benefits by the Social Security Administration ("SSA")  
19 under the Social Security Act (the "Act"). Plaintiff filed a Complaint, (Doc. 1), and an  
20 Opening Brief, (Doc. 10), seeking judicial review of that denial. Defendant SSA filed an  
21 Answering Brief, (Doc. 11), to which Plaintiff replied, (Doc. 12). After reviewing the  
22 parties' briefs, the Administrative Record, (Doc. 9), and the Administrative Law Judge's  
23 ("ALJ's") decision, (Doc. 9-3 at 15-33), the Court will affirm the ALJ's decision for the  
24 reasons addressed herein.

25 **I. BACKGROUND**

26 Plaintiff filed an Application for SSDI benefits in September 2019, alleging  
27 disability beginning in January 2019. (Doc. 9-3 at 15.) Plaintiff's claim was initially  
28 denied in March 2020. (*Id.*) After reconsideration, Plaintiff's claim was again denied on

1 August 11, 2020. (*Id.*) A hearing was held before ALJ Patricia Bucci on April 26, 2021.  
 2 (*Id.*) After considering the medical evidence and opinions, the ALJ determined that  
 3 Plaintiff suffered from severe impairments including multilevel degenerative disc disease,  
 4 depressive disorder, anxiety disorder, cyclothymic disorder, breast cancer in remission, and  
 5 obesity. (*Id.* at 19.) However, the ALJ concluded that, despite these impairments, Plaintiff  
 6 had the residual functional capacity (“RFC”) to perform light work as defined in 20 CFR  
 7 § 404.1567(b). (*Id.* at 23.) In light of this, the ALJ concluded that Plaintiff is not disabled  
 8 under sections 216(j) and 223(d) of the Act. (*Id.* at 32.) Thereafter, the Appeals Council  
 9 denied Plaintiff’s Request for Review of the ALJ’s decision—making it the final decision  
 10 of the SSA Commissioner (the “Commissioner”)—and this appeal followed. (Doc. 10 at  
 11 2.)

## 12 I. LEGAL STANDARDS

13 An ALJ’s factual findings “shall be conclusive if supported by substantial  
 14 evidence.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019). The Court may set aside  
 15 the Commissioner’s disability determination only if it is not supported by substantial  
 16 evidence or based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).  
 17 Substantial evidence is relevant evidence that a reasonable person might accept as adequate  
 18 to support a conclusion considering the record as a whole. *Id.* Generally, “[w]here the  
 19 evidence is susceptible to more than one rational interpretation, one of which supports the  
 20 ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas v. Barnhart*, 278 F.3d 47,  
 21 954 (9th Cir. 2002). In determining whether to reverse an ALJ’s decision, the district court  
 22 reviews only those issues raised by the party challenging the decision. *See Lewis v. Apfel*,  
 23 236 F.3d 503, 517 n.13 (9th Cir. 2001).

## 24 II. DISCUSSION

25 Plaintiff argues that the ALJ committed harmful error in evaluating Plaintiff’s  
 26 symptom testimony and in weighing the medical opinion evidence. (Doc. 10.) The Court  
 27 has reviewed the medical and administrative records and agrees with the Commissioner for  
 28 the following reasons.

### 1           **A. Plaintiff's Symptom Testimony**

2           An ALJ performs a two-step analysis to evaluate a claimant's testimony regarding  
 3 pain and symptoms. *Garrison v. Colvin*, 759 F.3d 995, 1014 (9th Cir. 2014). First, the  
 4 ALJ evaluates whether the claimant has presented objective medical evidence of an  
 5 impairment that "could reasonably be expected to produce the pain or symptoms alleged."  
 6 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035–36 (9th Cir. 2007) (quoting *Bunnell v.*  
 7 *Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). Second, absent evidence of malingering, an  
 8 ALJ may only discount a claimant's allegations for reasons that are "specific, clear and  
 9 convincing" and supported by substantial evidence. *Molina v. Astrue*, 674 F.3d 1104, 1112  
 10 (9th Cir. 2012).

11           "[T]he ALJ must specifically identify the testimony she or he finds not to be credible  
 12 and must explain what evidence undermines the testimony." *Holohan v. Massanari*, 246  
 13 F.3d 1195, 1208 (9th Cir. 2001). General findings are insufficient. *Id.* "Although the  
 14 ALJ's analysis need not be extensive, the ALJ must provide some reasoning in order for  
 15 [the Court] to meaningfully determine whether the ALJ's conclusions were supported by  
 16 substantial evidence." *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103 (9th  
 17 Cir. 2014). "[T]he ALJ may consider inconsistencies either in the claimant's testimony or  
 18 between the testimony and the claimant's conduct." *Molina*, 674 F.3d at 1112. For  
 19 instance, the ALJ may consider "whether the claimant engages in daily activities  
 20 inconsistent with the alleged symptoms." *Id.* (quoting *Lingenfelter*, 504 F.3d at 1040).

21           Plaintiff argues the ALJ committed materially harmful error by rejecting Plaintiff's  
 22 symptom testimony in the absence of specific, clear, and convincing reasons supported by  
 23 substantial evidence in the record. (Doc. 10 at 16.) Plaintiff further argues that the ALJ  
 24 did not link medical record characterizations with specific alleged inconsistencies within  
 25 Plaintiff's symptom testimony. (*Id.* at 17.) The Commissioner argues the ALJ reasonably  
 26 evaluated the medical opinions of Plaintiff's treatment providers and identified substantial  
 27 evidence in support of her findings. (Doc. 11 at 12–18.) The Commissioner further argues  
 28 that the ALJ gave valid reasons for discounting Plaintiff symptom testimony—including

1 that her conservative treatment was incompatible with her allegations, her limited mental  
2 health treatment did not comport with the severity of her allegations, her psychiatric  
3 examinations undermined her allegations of debilitating impairment, and her work and  
4 activities during the relevant period were inconsistent with her allegations. (*Id.*)

5 Here, Plaintiff alleges that she was successfully treated for breast cancer and that  
6 her cancer was in remission. (Doc. 10 at 19.) As a result of her surgeries and treatment,  
7 Plaintiff alleges that she still suffers residual symptoms and limitations, “including upper  
8 and lower extremity neuropathy, itching, fatigue, and cognitive decline.” (*Id.* at 3.)  
9 However, Plaintiff’s doctor indicated she was “able to carry on all pre-disease activities  
10 without restrictions” and treat her symptoms with conservative measures such as exercise,  
11 acupuncture, and ibuprofen. (Doc. 9-9 at 170; Doc. 9-20 at 27, 38.) The ALJ also noted  
12 that Plaintiff’s alleged back pain limitations were inconsistent with the record as she  
13 walked with a normal gait and coordination, had intact strength and sensation in the upper  
14 and lower extremities, could walk on her toes and heels and squat, and treated her back  
15 pain conservatively with over-the-counter medication such as ibuprofen. (Doc. 9-3 at 103;  
16 Doc. 9-9 at 85; Doc. 9-21 at 84.)

17 Next, the ALJ discounted Plaintiff’s allegations of mental impairment as she was  
18 already taking medication for her depression and anxiety and was not participating in  
19 therapy or any other mental health treatment. (Doc. 9-3 at 25.) The ALJ also discounted  
20 Plaintiff’s allegations for mental impairment based on the Dr. Ramio Guillen’s findings  
21 which showed Plaintiff was cooperative, showed intact memory, normal attention, and  
22 normal concentration. (*Id.* at 28–29; Doc. 9-22 at 121, 125, 129, 134, 139.) Finally, the  
23 ALJ found Plaintiff’s symptom testimony limiting her capacity to work unpersuasive on  
24 the basis that she worked as a registered nurse after the alleged onset date, was able to go  
25 on a cruise in the South Caribbean (Doc. 9-3 at 26; Doc. 9-21 at 86), go SCUBA diving  
26 (Doc. 9-3 at 26; Doc. 9-18 at 31), and travel to Tahiti (Doc. 9-3 at 26; Doc. 9-22 at 128).

27 The Court finds that the ALJ gave specific reasons for finding Plaintiff’s testimony  
28 not credible. These specific reasons include Plaintiff’s conservative treatment of her

1 symptoms, her psychiatric examinations undermining her allegations of debilitating mental  
2 impairments, and her work and other activities being inconsistent with her claimed  
3 limitations. (Doc. 11 at 6–10); *see also Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th  
4 Cir. 2008) (“The ALJ may consider many factors in weighing a claimant’s credibility,”  
5 including “unexplained or inadequately explained failure to seek treatment or to follow a  
6 prescribed course of treatment.”). Although Plaintiff may disagree with how the ALJ  
7 interpreted the record and her subjective symptom characterization, the ALJ offered  
8 sufficient reasoning to discount her testimony.

9 Therefore, the Court finds the ALJ did not commit materially harmful error by  
10 rejecting Plaintiff’s symptom testimony.

### 11 **B. Evaluation of Medical Testimony**

12 An ALJ “must consider all medical opinion evidence.” *Tommasetti*, 533 F.3d at  
13 1041 (citing 20 C.F.R. § 404.1527(b)). “Where an ALJ does not explicitly reject a medical  
14 opinion or set forth specific, legitimate reasons for crediting one medical opinion over  
15 another, he errs.” *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014). The ALJ accords  
16 “controlling weight” to a treating doctor’s medical opinion so long as it is supported by  
17 medically acceptable diagnostic techniques and is not inconsistent with other substantial  
18 evidence. *See* 20 C.F.R. § 404.1527(c)(2); *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir.  
19 2017). If the opinion is not accorded controlling weight, then the ALJ looks to several  
20 other factors to determine how much weight it should have, including evidence supporting  
21 the treating doctor’s opinion and the consistency of the opinion. *Id.* “[A]n ALJ may  
22 disregard a medical opinion that is brief, conclusory, and inadequately supported by  
23 clinical findings.” *Britton v. Colvin*, 787 F.3d 1011, 1012 (9th Cir. 2015).

24 An ALJ “may only reject a treating or examining physician’s uncontradicted  
25 medical opinion based on ‘clear and convincing reasons.’” *Carmickle v. Comm’r of Soc.*  
26 *Sec.*, 533 F.3d 1155, 1164 (9th Cir. 2008) (quoting *Lester v. Chater*, 81 F.3d 821, 830–31  
27 (9th Cir. 1995)). “Where such an opinion is contradicted, however, it may be rejected for  
28 specific and legitimate reasons that are supported by substantial evidence in the record.”

1 *Id.* An ALJ meets this standard by “setting out a detailed and thorough summary of the  
 2 facts and conflicting medical evidence, stating his interpretation thereof, and making  
 3 findings.” *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

4 Claims filed on or after March 27, 2017, are subject to amended regulations for  
 5 evaluating medical evidence. *See* Revisions to Rules Regarding Evaluations of Medical  
 6 Evidence, 82 Fed. Reg. 5844 (Jan. 18, 2017) (codified at 20 C.F.R. pts. 404 & 416). Here,  
 7 Plaintiff filed her claim in September 2019, therefore these new regulations apply. In  
 8 applying these new regulations, the Ninth Circuit held that an ALJ “must  
 9 ‘articulate . . . how persuasive’ it finds ‘all of the medical opinions’ from each doctor or  
 10 other source, and ‘explain how [it] considered the supportability and consistency factors’  
 11 in reaching these findings.” *See Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022)  
 12 (citing 20 C.F.R. § 404.1520c(b)(2)) (internal citation omitted). Supportability refers to  
 13 the extent to which a “medical source supports the medical opinion by explaining the  
 14 ‘relevant . . . objective medical evidence’” while consistency refers to the “extent to which  
 15 a medical opinion is ‘consistent . . . with the evidence from other medical sources and  
 16 nonmedical sources in the claim.’” *Id.* (quoting 20 C.F.R. § 404.1520(c)(1)–(2)).

17 Plaintiff argues that the ALJ improperly rejected the medical opinions of Joanne  
 18 Schlesinger, NP, Maqbool Halepota, M.D., and Gordon L. Grado., M.D. (Doc. 10 at 10–  
 19 16.) The Commissioner argues that substantial evidence supports the ALJ’s findings with  
 20 respect to these medical opinions. (Doc. 11 at 13–17.) For the following reasons, the Court  
 21 agrees with the Commissioner.

22 First, Nurse Schlesinger assessed Plaintiff’s physical capacities on January 14,  
 23 2021. (Doc. 10 at 7.) During this assessment, she filled out a form consisting of checked  
 24 boxes showing that Plaintiff indicated symptoms of neuropathy, body aches and joint pain,  
 25 cognitive decline, and memory loss. (Doc. 9-19 at 243–46.) The form also described  
 26 Plaintiff’s limitations, including that she would be absent more than four days per month  
 27 if she went to work. (*Id.* at 246.) Lastly, the form indicated that Plaintiff has been treated  
 28 for breast cancer, which is now in remission, with chemotherapy, radiation, and a bilateral

1 mastectomy. (*Id.* at 243.)

2 In finding Nurse Schlesinger's opinion unpersuasive, the ALJ stated that her opinion  
3 consisted of checking boxes off a form, provided minimal explanation, and was  
4 inconsistent with the overall record. (Doc. 9-3 at 28.) Contrary to Plaintiff's argument,  
5 the ALJ did not discount the treatment source assessment merely based on a lack of  
6 narrative explanation. (*See* Doc. 10 at 13.) Rather, the ALJ's opinion found the  
7 combination of a form mostly consisting of checked boxes with minimal explanation for  
8 the extreme limitations recommended *combined* with the finding that this opinion was  
9 inconsistent with the record unconvincing. These findings combined makes the ALJ's  
10 finding acceptable. In particular, the ALJ noted medical records, work activity, and travel  
11 that conflicted with Nurse Joanne Schlesinger's conclusions regarding the extent of  
12 Plaintiff's limitations. (Doc. 9-3 at 26.)

13 In short, the ALJ's analysis addressed both the supportability and consistency of the  
14 opinion. Nurse Schlesinger's opinion was brief and did little to explain "the  
15 'relevant . . . objective medical evidence[.]'" *Woods*, 32 F.4th at 792 (citing 20 C.F.R. §  
16 404.1520c(b)(2)). Further, Nurse Schlesinger's opinion conflicted with Plaintiff's other  
17 treatment records and the record as a whole. In sum, the ALJ set forth specific and  
18 legitimate reasons for rejecting this medical opinion. Accordingly, substantial evidence  
19 supported the ALJ's decision to assign limited weight to Nurse Schlesinger's opinion.

20 Second, Dr. Grado provided an opinion pertaining to Plaintiff's limitations. His  
21 opinion stated that Plaintiff reported subjective complaints including forgetfulness, fatigue,  
22 depression, itching, joint pain, and difficulty working at her past job on a full-time basis.  
23 (Doc. 9-19 at 145.) Additionally, Dr. Grado's opinion consisted of a form with minimal  
24 explanation. (Doc 9-21 at 2–5.) Lastly, the opinion consistently presented generally  
25 unremarkable findings of relatively normal range of motion in all four extremities, normal  
26 sensation, and normal motor strength. (Doc. 9-19 at 17, 21, 155, 162.)

27 The ALJ found this opinion unpersuasive for many of the same reasons she found  
28 Nurse Schlesinger's opinion unpersuasive. First, the ALJ found Dr. Grado's opinion to



1 consist of a checkbox form with minimal explanation. (Doc. 9-3 at 28.) The ALJ also  
2 concluded that Dr. Grado's opinion was unpersuasive as it appeared to be based on  
3 Plaintiff's subjective complaints. (*Id.*; Doc. 9-19 at 145.) The ALJ finally concluded that  
4 Dr. Grado's opinion was inconsistent not only with his recommendations but also the  
5 greater record. (Doc. 9-3 at 28.) This conclusion is supported by several portions of Dr.  
6 Grado's opinion where he opines as to Plaintiff's normal range of motion, sensation, and  
7 motor strength. (Doc. 9-9 at 85.) However, the ALJ found these largely unremarkable  
8 findings to be inconsistent with Dr. Grado's recommended limitations. (Doc. 9-3 at 28.)  
9 The ALJ reasonably interpreted Dr. Grado's opinion as to his recommendations for  
10 Plaintiff's limitations to be inconsistent with the greater record. Given the problems with  
11 Dr. Grado's opinion and the record as a whole, the ALJ's decision to assign limited weight  
12 to this opinion was supported by substantial evidence.

13 Third, Dr. Halepota also provided an opinion pertaining to Plaintiff's limitations.  
14 (Doc. 9-20 at 130–133.) He indicated that Plaintiff was cancer-free but had symptoms of  
15 cognitive decline, memory loss, and severe generalized myalgias and arthralgias secondary  
16 to her cancer therapy. (*Id.* at 134.) He believed these symptoms would frequently interfere  
17 with Plaintiff's ability to concentrate, but that she would be capable of low-stress jobs.  
18 (Doc. 9-21 at 3.) Lastly, he asserted that Plaintiff can frequently lift ten pounds and  
19 occasionally lift twenty pounds. (*Id.* at 4.)

20 The ALJ also found Dr. Halepota's opinion unpersuasive. (Doc. 9-3 at 27.) The  
21 ALJ deemed Dr. Halepota's opinion inconsistent with other physical examinations on the  
22 record which showed that Plaintiff had normal strength in the lower and upper extremities,  
23 normal gait, and no distress. (*Id.* at 25–26.) Moreover, the ALJ noted that the opinion  
24 failed to indicate what level of cognitive decline Plaintiff had suffered and found the  
25 statements on the topic to be vague and imprecise. (*Id.* at 27.) Accordingly, substantial  
26 evidence supports the ALJ's decision to find Dr. Halepota's opinion unpersuasive.

27 In summary, the ALJ's findings are supported by substantial evidence. The ALJ did  
28 not commit error.



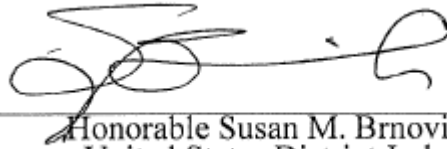
1     **III. CONCLUSION**

2             For the reasons discussed above,

3             **IT IS ORDERED** affirming the June 14, 2021 decision of the ALJ, as upheld by  
4     the Appeals Council.

5             **IT IS FURTHER ORDERED** directing the Clerk to enter final judgement  
6     consistent with this Order and close this case.

7             Dated this 15th day of February, 2024.

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11             \_\_\_\_\_  
12             Honorable Susan M. Brnovich  
13             United States District Judge